

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

John Alan Miller, #161975,)	C/A No. 2:09-1056-JFA-RSC
)	
Plaintiff,)	
)	ORDER
v.)	
)	
Larry Davis, c-o South Carolina Department)	
of Probation, Parole, and Pardon Services;)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, John Alan Miller, is an inmate at the Kershaw Correctional Institution of the South Carolina Department of Corrections (“SCDC”). He initiated this action pursuant to 42 U.S.C. § 1983 contending, among other things, that defendant Davis lied at his probation violation proceeding in state court. The plaintiff seeks damages for slander, defamation, libel, malicious intent, and mental anguish.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should summarily dismiss the complaint. The Magistrate Judge opines that the plaintiff’s claims have not accrued and the action must be dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). The

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Magistrate Judge further notes that the plaintiff's claims of defamation, slander, or libel are not actionable under 42 U.S.C. § 1983. *Paul v. Davis*, 424 U.S. 693 (1976). The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

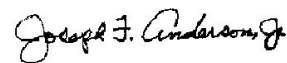
The plaintiff was advised of his right to file objections to the Report and Recommendation and has done so in an eight-page objection memorandum. The Magistrate Judge is correct that *Heck* bars this action at the present time. For this reason, the plaintiff's objections are all overruled.

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is dismissed without prejudice and without issuance and service of process.

In addition, this case is deemed a "strike" under the "three strikes" rule of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

May 12, 2009
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge